

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Telecommunications Carriers Eligible for	)	WC Docket No. 09-197
Universal Service Support	)	
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42

**PUBLIC KNOWLEDGE AND BENTON FOUNDATION COMMENTS IN SUPPORT OF  
REQUEST FOR RECONSIDERATION CONCERNING LIFELINE BROADBAND  
PROVIDERS**

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## I. Introduction

Public Knowledge and Benton Foundation<sup>1</sup> submit these comments in response to the Federal Communications Commission's ("Commission" or "FCC") Public Notice<sup>2</sup> seeking comment on a request for reconsideration<sup>3</sup> concerning the Wireline Communications Bureau's ("WCB") Order on Reconsideration ("*LBP Revocation Order*") revoking the Lifeline Broadband Provider ("LBP") designations of nine service providers.<sup>4</sup> The WCB should reconsider the decision reached in its *LBP Revocation Order* and reinstate the LBP designations of Spot On Networks LLC, Boomerang Wireless LLC, KonaTel Inc., STS Media, Inc., Applied Research Designs, Inc., Kajeet Inc., Liberty Cablevision of Puerto Rico, LLC, Northland Cable Television, Inc., and Wabash Independent Networks (collectively, "Service Providers").

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<sup>1</sup> The Benton Foundation is a nonprofit organization dedicated to promoting communication in the public interest. These comments reflect the institutional view of the Foundation and, unless obvious from the text, are not intended to reflect the views of individual Foundation officers, directors, or advisors.

<sup>2</sup> See *Wireline Competition Bureau Seeks Comment on Request for Reconsideration Concerning Lifeline Broadband Providers*, WC Docket Nos. 09-197, 11-42, Public Notice, DA 17-213 (rel. March 2, 2017).

<sup>3</sup> See Letter from Jessica J. Gonzalez, Free Press, 18MillionRising.org, AFL-CIO, American Library Association, Appalshop, Inc., Asian Americans Advancing Justice – AAJC, Center for Media Justice, Center for Rural Strategies, Color of Change, Common Cause, Common Sense Kids Action, Communications Workers of America, Fight for the Future, FOOTPRINTS INC., Generation Justice, Global Action Project, human-I-T, Inclusive Technologies, Monterey County Office of Education, NAACP, National Consumer Law Center, National Digital Inclusion Alliance, National Hispanic Media Coalition, Native Public Media, New America's Open Technology Institute, Open MIC, Partners Bridging the Digital Divide, Public Knowledge, SPNN, The Benton Foundation, The Greenlining Institute, United Church of Christ, OC Inc., and WinstonNet, Inc., LLP, to Chairman Pai, Commissioner Clyburn, and Commissioner O'Rielly, FCC, WC Docket No. 11-42 (filed Feb. 23, 2017).

<sup>4</sup> See *Telecommunications Carriers Eligible for Universal Service Support et al.*, WC Docket Nos. 09-197, 11-42, Order on Reconsideration, DA 17-128 (rel. Feb. 3, 2017) ("*LBP Revocation Order*").

## **II. Reinstating the Lifeline Broadband Provider Designations Will Not Compromise the Integrity of the Lifeline Program.**

The *LBP Revocation Order* largely justifies its decision to revoke the LBP status of the Service Providers on the specious and unsupported claims that revoking the Service Providers' LBP designations will "promote program integrity" and may be necessary "to prevent further waste, fraud, and abuse in the Lifeline Program."<sup>5</sup> Further, both Chairman Pai and the *LBP Revocation Order* imply that systemic waste, fraud, and abuse are rampant in the Lifeline program.<sup>6</sup> The WCB's conclusions are misguided and are not supported by the record. Reinstating the Service Providers' LBP designations will not compromise the integrity of the Lifeline program.

### **A. The Commission's Lifeline Reform and Modernization Orders Have Significantly Improved the Integrity of the Lifeline Program, and Those Efforts are Continuing.**

In recent years, the Commission has taken actions that have significantly improved the integrity of the Lifeline program. In 2012, the Commission instituted multiple reforms to shore up Lifeline, including establishing the National Lifeline Accountability Database ("NLAD") to prevent duplicate claims for Lifeline benefits, limiting Lifeline to a single subscription per household; eliminating Link-Up support on non-Tribal lands; implementing a flat \$9.25 per month subsidy per subscriber; establishing uniform Lifeline eligibility criteria for Lifeline subscribers; basing disbursements to Lifeline providers on actual subscriptions instead of projections; and requiring Lifeline providers verify an applicant's eligibility at the time of enrollment and on an annual basis, conduct a biennial audit of their compliance with the

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<sup>5</sup> *Id.* at ¶¶ 7-8.

<sup>6</sup> See Federal Communications Commission Chairman Ajit Pai, Setting the Record Straight on the Digital Divide, Medium, Feb. 7, 2017, <https://medium.com/@AjitPaiFCC/setting-the-record-straight-on-the-digital-divide-615a9da1f2d1#.g33b5r7kf>; *LBP Revocation Order* at ¶¶ 7-8.

program's rules, and notify and de-enroll subscribers who do not use the service for an extended period of time.<sup>7</sup> In 2015, an independent analysis by the Government Accountability Office ("GAO") found that the Commission's 2012 reforms had improved the integrity of the Lifeline program. Although some program reforms remained in progress or incomplete at the time of its analysis, GAO reported that reforms that had been implemented resulted in disbursements declining from \$2.2 billion in 2012 to \$1.7 billion in 2014.<sup>8</sup>

Since 2012, the FCC has continued to implement improvements to the subscriber verification process and further improve the program's integrity. One of the major improvements is the establishment of a National Lifeline Eligibility Verifier ("National Verifier").<sup>9</sup> As the Commission noted, the National Verifier forecloses the main source of fraud in the program: Lifeline providers determining subscriber eligibility. Once the National Verifier is fully established, the type of fraud described in the Total Call Mobile enforcement action, and the other examples cited in the *LBP Revocation Order*, would be eliminated completely.<sup>10</sup> The Commission also modified the list of Federal and Tribal programs subscribers can use to demonstrate eligibility.<sup>11</sup> Programs such as the Supplemental Nutrition Assistance Program and Medicaid have existing procedures to ensure program integrity.<sup>12</sup> By using these programs to determine eligibility for Lifeline, the Commission can successfully leverage external fraud

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<sup>7</sup> See *Lifeline and Link Up Reform and Modernization et. al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6683, 6734-81, ¶¶ 60, 179-285 ("2012 Lifeline Reform Order").

<sup>8</sup> U.S. Government Accountability Office, GAO-15-335, FCC Should Evaluate The Efficiency and Effectiveness of the Lifeline Program, at 24 (2015).

<sup>9</sup> See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4006, ¶ 126 (2016) (*Lifeline Modernization Order*).

<sup>10</sup> *LBP Revocation Order* at ¶ 7.

<sup>11</sup> *Lifeline Modernization Order*, 31 FCC Rcd 3962, 4029, ¶ 188.

<sup>12</sup> See, e.g., United States Department of Agriculture, Agency Financial Report, Fiscal Year 2014, 199 (citing a 0.00 percent error rate for improper payments made based on inability to authenticate eligibility).

prevention procedures as an additional level of protection to ensure the integrity of the Lifeline program.

While waste, fraud, and abuse spiked in the Lifeline program after it expanded to cover mobile offerings. That spike was largely due to the Commission's lack of safeguards in place prior to the wireless expansion.<sup>13</sup> It is clear that the Commission has now taken effective steps to curb that fraud. There is no need to prevent providers from entering the program and slow the implementation of the 2016 *Lifeline Modernization Order*. In fact, if the Commission wants to further prevent fraud in the Lifeline program, it should implement the *Lifeline Modernization Order* expeditiously and complete the program reforms suggested in the 2012 *Lifeline Reform Order*.<sup>14</sup>

Lastly, while the *LBP Revocation Order* and Chairman Pai have claimed the Universal Service Administrative Company ("USAC") has indicated that at least 16 major Lifeline resellers have engaged in fraud to claim reimbursement for duplicate and ineligible consumers, neither the WCB nor Chairman Pai have provided any evidence documenting USAC's concerns.<sup>15</sup> Mere conjecture without evidence and documentation should not be the basis for the WCB's revocation of LBP designations.

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<sup>13</sup> Democratic Staff Report, *The Lifeline Program: Examining Recent Allegations of Waste, Fraud, and Abuse*, at 6-8 (rel. July 2016), *available at*, [https://democrats-energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/Lifeline%20Oversight%20Report%20\(7.12.2016\).pdf](https://democrats-energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/Lifeline%20Oversight%20Report%20(7.12.2016).pdf) (pointing to a lack of program oversight and failure to adopt sufficient program reforms prior to 2009.).

<sup>14</sup> See *supra* note 6.

<sup>15</sup> *LBP Revocation Order* at ¶ 7 (citing Testimony of FCC Commissioner Ajit Pai Before the Subcommittee on Communications and Technology of the United States House of Representatives Committee on Energy and Commerce, Oversight of the Federal Communications Commission, at 4-5 (July 12, 2016)). Chairman Pai's July 12, 2016 testimony does not include any citation or evidence that would allow for verification or investigation of his claim that USAC has expressed concern that 16 major Lifeline resellers have used tactics similar to Total Call Mobile.

**B. Withholding the Lifeline Broadband Provider Designations is Inconsistent with the Record and Commission Precedent.**

The WCB's December and January Orders ("*LBP Designation Orders*") designating the Service Providers as LBPs explained that the Service Providers are not the subject of any pending enforcement proceeding, investigation, or regulatory action, and their history of compliance with applicable laws and regulations makes it likely the Service Providers will bolster the integrity of the Lifeline program.<sup>16</sup> The *LBP Revocation Order* explains the *LBP Designation Orders*' evaluation of waste, fraud, and abuse is overly simplistic, and that the WCB's public interest analysis had previously been too narrowly focused on the past behavior of the Service Providers and instead should also focus on the potential for the Service Providers to engage in fraudulent behavior.<sup>17</sup> The WCB's position is a solution in search of a problem, and taken to its logical end, the WCB appears prepared to refrain from granting any LBP designations until any possibility for waste, fraud, and abuse has been eradicated from the program.

Moreover, the Commission routinely fines service providers, providing all manner of services, for behavior that violates the FCC's rules. These enforcement actions do not lead the Commission to universally refrain from permitting parties to move forward with their business at the Commission. For example, FCC enforcement actions against wireless providers do not cause the Wireless Telecommunications Bureau ("WTB") to withhold granting the transfer or assignment of spectrum licenses when the parties are unconnected to the enforcement actions, much less place a hold on the Commission's ability to grant wireless licenses to new market

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<sup>16</sup> See *Telecommunications Carriers Eligible for Universal Service Support et al.*, WC Docket Nos. 09-197, 11-42, Order, 31 FCC Rcd 12736, 12742-43 ¶¶ 21, 23 (2016); *Telecommunications Carriers Eligible for Universal Service Support et al.*, WC Docket Nos. 09-197, 11-42, Order, 32 FCC Rcd 784, 792 ¶¶ 23, 25 (2017).

<sup>17</sup> See *LBP Revocation Order* at ¶ 8.

entrants. The WCB's decision to revoke the LBP designations is inconsistent with the Commission's practices, and its reliance on the potential of waste, fraud, and abuse in the Lifeline program is unsupported by the record.

### **III. The Commission Has the Requisite Legal Authority to Designate Providers as Eligible to Offer Lifeline Service.**

In response to public displeasure with the WCB's decision to revoke the LBP designations, Chairman Pai presented the additional argument, via blog, that the LBP designation process may not be "legally defensible."<sup>18</sup> However, this argument was conspicuously absent from the discussion in the *LBP Revocation Order*. In the *Lifeline Modernization Order*, the Commission determined that the FCC has the requisite authority to designate LBPs.<sup>19</sup> Primarily, the Commission found section 214(e) permits carriers to obtain Eligible Telecommunications Carrier ("ETC") designations specific to Lifeline.<sup>20</sup> The Commission then preempted the states' authority to designate Lifeline-only broadband ETCs.<sup>21</sup> Many potential LBPs have highlighted the patchwork of state ETC requirements and the significant burden it places on ETCs.<sup>22</sup> The American Cable Association specifically explained that the burdensome requirements of ETC

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<sup>18</sup> See Federal Communications Commission Chairman Ajit Pai, Setting the Record Straight on the Digital Divide, Medium, Feb. 7, 2017, <https://medium.com/@AjitPaiFCC/setting-the-record-straight-on-the-digital-divide-615a9da1f2d1#.g33b5r7kf>.

<sup>19</sup> *Lifeline Modernization Order*, 27 FCC Rcd 6656, 6673-74, ¶¶ 223-276.

<sup>20</sup> *Id* at ¶ 229.

<sup>21</sup> *Id* at ¶ 249.

<sup>22</sup> Letter from Jennifer K. McKee, National Cable & Telecommunications Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42, at 1 (filed Mar. 17, 2016) (supporting a national process for becoming a Lifeline Broadband Provider to reduce barriers to entry in the program); See Comments of TracFone, WC Docket No 11-42 et al., at 45 (August 31, 2015) (noting that some states designation processes have involved discovery by state commission staff, intervenors, and formal evidentiary hearings, and remained pending for several years); Letter from Phillip Berenbroick, Counsel, Government Affairs, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 3 (filed Jan. 14, 2016) (noting that providers encounter "the difficulties in customizing generic billing software and practices on a state-by-state basis to comply with the different state requirements for 214(e).").

designation may prevent some broadband providers from participating in Lifeline.<sup>23</sup> Section 706(a) specifically states that the Commission “shall” encourage the deployment of broadband to all Americans, using a variety of tools. Given the role Lifeline plays in bringing broadband to low-income Americans and the need for a streamlined ETC process, the Commission determined it was clearly within its authority to create a federal Lifeline Broadband Provider designation process.

However, if the current Commission is not convinced that the LBP designation process, as designed, is within the Commission’s authority, the Commission could simply permit non-ETCs to participate in the Lifeline program.<sup>24</sup> The Chairman’s concerns with pending litigation need not compromise the ability of the Lifeline program and service providers to provide low-income families with essential connectivity.

#### **IV. Revoking the Lifeline Provider Designations Inhibits the Commission’s Efforts to Close the Digital Divide.**

The importance of broadband in today’s society cannot be overstated. As the Commission has noted, “Americans turn to broadband Internet access service for every facet of daily life, from finding a job to finding a doctor, from connecting with family to making new friends, from becoming educated to being entertained.”<sup>25</sup> Without access to broadband service,

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<sup>23</sup> Comments of American Cable Association, WC Docket No. 11-42 et. al, at 8 (August 31, 2015) (“[t]he ETC designation process is so burdensome that it presents a substantial barrier to participation.”).

<sup>24</sup> Letter from Phillip Berenbroick, Counsel, Government Affairs, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 2-4 (filed Dec. 21, 2016); Letter from Anisa A. Latif, Director, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 4 (filed Dec. 21, 2016) (explaining that 47 U.S.C. § 254(j) and 254(e) support the expansion of the Lifeline program to non-ETC registered Lifeline providers, and in the alternative, the Commission could forbear from requiring that Lifeline participating carriers become ETCs.).

<sup>25</sup> *Inquiry Concerning the Deployment of Advanced Telecommunications Capability To All Americans In A Reasonable and Timely Fashion, and Possible Steps To Accelerate Such*



low-income Americans lose out on opportunities to improve their lives and the lives of their children. Unfortunately, there is a large gap in access to affordable broadband between low-income Americans and the rest of the country.<sup>26</sup> This is why the Commission acted to extend Lifeline subsidies to broadband.<sup>27</sup>

In recognizing the importance of broadband access, Chairman Pai has made closing the digital divide his top priority.<sup>28</sup> A vibrant Lifeline program plays an invaluable role in that effort. LBPs will provide Wi-Fi-enabled devices with hotspot functionality to numerous Americans who would not be able to afford them without the Lifeline program. These are features that will benefit low-income students who face a homework gap. Teachers in high-poverty schools are more likely than teachers in more affluent schools (56 percent to 21 percent, respectively) to cite students' lack of resources and access to digital technologies as a challenge in their classrooms. Meanwhile, only three percent of teachers in high-poverty schools believe their students have the digital tools they need to effectively complete assignments while at home.<sup>29</sup>

If the Commission prevents providers from entering the market, less Americans will be able to take advantage of the program's benefits. Additionally, the WCB's actions risk chilling future provider participation in Lifeline. The Commission should encourage more provider participation, not less. More competition in the market will work to lower the price of broadband

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*Deployment Pursuant To Section 706 of the Telecommunications Act of 1996, As Amended By the Broadband Data Improvement Act*, 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, 30 FCC Rcd 1375, 1377, ¶ 2 (2015).

<sup>26</sup> See Andrew Perrin and Maeve Duggan, Pew Research Center, Americans' Internet Access: 2000-2015 (2015), [http://www.pewinternet.org/files/2015/06/2015-06-26\\_internet-usage-across-demographics-discover\\_FINAL.pdf](http://www.pewinternet.org/files/2015/06/2015-06-26_internet-usage-across-demographics-discover_FINAL.pdf) (Americans' Internet Access Study).

<sup>27</sup> *Lifeline Modernization Order*, 31 FCC Rcd 3962, 3963 ¶ 1.

<sup>28</sup> Letter from Chairman Ajit Pai to Senator Tammy Baldwin (February 21, 2017), *available at* [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2017/db0303/DOC-343756A3.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0303/DOC-343756A3.pdf).

<sup>29</sup> Linda Darling-Hammond et al., Stanford Center For Opportunity Policy In Education, *Using Technology To Support At-Risk Students' Learning*, at 2-3, Fig. 2 (2014).

offerings available to Lifeline subscribers.<sup>30</sup> Lower prices increase the value to consumers and make broadband more accessible to those who need it most. Increasing the number of LBPs, especially those that have no history of exploiting the program, would go a long way to achieving the Chairman's goal of closing both the digital divide, as well as provide Lifeline subscribers with more choices and better quality services, stretching the value of every dollar spent on Lifeline-supported services.

## **V. Conclusion**

The Lifeline program should be a core component of Chairman Pai's stated aim of closing the digital divide. Affordability and availability are both key barriers to adoption. Lifeline has brought telephone service to millions of Americans in poverty, and with sufficient support from the Commission, it can be an important part of the FCC's efforts to bring broadband to all Americans. In recent years, the Commission has been adept at monitoring fraudulent behavior and enforcing the Lifeline program rules. The Commission's active monitoring and enforcement, in combination with the protections put in place since 2012, have greatly improved the integrity of the Lifeline program. The Commission should reconsider its decision to revoke the LBP designations and encourage providers to enter the Lifeline market to increase the program's ability to bring broadband to as many low income Americans as possible.

Respectfully submitted,

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<sup>30</sup> *Lifeline Modernization Order*, 31 FCC Rcd 3962, 4008 ¶ 130.